

Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
7/20/2023 6:58 PM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By S. Drew, Deputy Clerk

**CONSUMER WATCHDOG**  
Jerry Flanagan (SBN: 271272)  
jerry@consumerwatchdog.org  
Daniel L. Sternberg (SBN: 329799)  
danny@consumerwatchdog.org  
6330 San Vicente Blvd., Suite 250  
Los Angeles, CA 90048  
Tel: (310) 392-0522  
Fax: (310) 392-8874

**WHATLEY KALLAS, LLP**  
Alan M. Mansfield (SBN: 125998)  
amansfield@whatleykallas.com  
16870 W. Bernardo Dr., Suite 400  
San Diego, CA, 92127  
Tel: (858) 674-6641  
Fax: (855) 274-1888

**Attorneys for Plaintiff**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

JOHN DOE, on behalf of himself and all others  
similarly situated and for the benefit of the  
general public,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF PUBLIC  
HEALTH, *et al.*

Defendants.

Case No. 20STCV32364

*[Assigned to the Hon. Lawrence P. Riff in  
Dept. 7 of Spring Street Courthouse]*

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT**

Final Approval Hearing Scheduled Per May 19,  
2023 Preliminary Approval Order:

Date: August 25, 2023  
Time: 10:00 a.m.

TABLE OF CONTENTS

**I. INTRODUCTION ..... 1**

**II. DUNK/KULLAR ANALYSIS SUPPORTS FINAL APPROVAL OF THIS SETTLEMENT ..... 3**

A. Summary of Allegations in the Amended Complaint ..... 3

    1. Information Practices Act of 1977 (“IPA”)..... 5

    2. AIDS Public Health Records Confidentiality Act..... 6

    3. Confidentiality of Medical Information Act (“CMIA”)..... 6

    4. Invasion of Privacy..... 7

    5. Negligence..... 8

    6. Unfair Competition Law ..... 8

B. Summary of Settlement Negotiations..... 9

**III. THE TERMS OF THE SETTLEMENT AGREEMENT ARE REASONABLE..... 10**

A. The Consideration Being Received for the Release of Class Members’  
    Claims Is Reasonable ..... 10

B. Release of Claims ..... 14

C. Class Notice..... 15

D. Attorneys’ Fees and Expenses..... 15

E. Payment of Costs and Notice and Settlement Administration ..... 16

**IV. THIS SETTLEMENT SHOULD BE FINALLY APPROVED ..... 16**

A. The Settlement Is Entitled to a Presumption of Fairness ..... 16

B. The Proposed Settlement Is Fair, Reasonable, and Adequate ..... 16

    1. The Relief Offered in the Settlement ..... 17

    2. Risks of Establishing Liability and the Risk of Maintaining Class  
    Action Status through Trial ..... 17

    3. Complexity, Expense, and Likely Duration of the Litigation ..... 18

    4. Experience and Views of Counsel..... 19

    5. Reaction from the Settlement Class ..... 19

    6. The Stage of the Proceedings at Which Settlement Was Achieved ..... 19

**V. THE NOTICE PLAN COMPLIED WITH THIS COURT’S PRELIMINARY APPROVAL ORDER AND APPLICABLE LEGAL STANDARDS ..... 19**

**VI. CONCLUSION..... 20**

1 **TABLE OF AUTHORITIES**

2 **Cases**

3 *7-Eleven Owners for Fair Franchising v. Southland Corp.*  
4 (2000) 85 Cal.App.4th 1135..... 19

5 *Bell v. Am. Title Ins. Co.*  
6 (1991) 226 Cal.App.3d 1589..... 16

7 *Chavez v. Netflix*  
8 (2008) 162 Cal.App.4th 43..... 20

9 *Clark v. Am. Residential Servs. LLC*  
10 (2009) 175 Cal.App.4th 785..... 16

11 *Cortez v. Purolator Air Filtration Prod. Co.*  
12 (2000) 23 Cal.4th 163..... 9

13 *Duarte v. Zachariah*  
14 (1994) 22 Cal.App.4th 1652  
15 *as modified on denial of reh’g* (Mar. 30, 1994) ..... 8

16 *Dunk v. Ford Motor Co.*  
17 (1996) 48 Cal.App.4th 1794  
18 *as modified* (Sept. 30, 1996)..... 3, 9, 10, 14, 17

19 *Fairfield v. Am. Photocopy Equipment Co.*  
20 (1955) 138 Cal.App.2d 82..... 8

21 *Hernandez v. Restoration Hardware, Inc.*  
22 (2018) 4 Cal.5th 260..... 10, 19

23 *In re Microsoft I-V Cases*  
24 (2006) 135 Cal.App.4th 706..... 9

25 *In re Vitamin Cases*  
26 (2003) 107 Cal.App.4th 820..... 19

27 *Kullar v. Foot Locker Retail, Inc.*  
28 (2008) 168 Cal.App.4th 116..... 3, 9, 10, 16, 17

*Linder v. Thrifty Oil Co.*  
(2000) 23 Cal.4th 429  
*as modified* (Aug. 9, 2000)..... 18

*Mark v. Spencer*  
(2008) 166 Cal.App.4th 219  
*as modified on denial of reh’g* (Sept. 17, 2008)..... 15

*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*  
(2010) 186 Cal.App.4th 399..... 3

*Nat. Gas Anti-Trust Cases, I, II, III & IV*  
(Cal. Super. Ct. Dec. 11, 2006) Nos. 4221, 4228, 4224, 4226, 2006 WL 5377849..... 19

*Occidental Land, Inc. v. Super. Ct.*  
(1976) 18 Cal.3d 355..... 18

1 *Radcliffe v. Experian Information Solutions Inc.*  
(9th Cir. 2013) 715 F.3d 1157 ..... 16

2 *Stambaugh v. Super. Ct.*  
(1976) 62 Cal.App.3d 231 ..... 16

3 *Stoetzner v. U.S. Steel Corp.*  
4 (3d. Cir. 1990) 897 F.2d 115 ..... 19

5 *Trotsky v. Los Angeles Fed. Sav. & Loan Ass’n*  
(1975) 48 Cal.App.3d 134 ..... 19

6 *Weinstat v. Dentsply Intern., Inc.*  
7 (2010) 180 Cal.App.4th 1213 ..... 18

8 *Wershba v. Apple Computer, Inc.*  
(2001) 91 Cal.App.4th 224 ..... 10, 14, 18, 19

9

10 **Federal Rules and Regulations**

11 42 C.F.R. 423.505 ..... 12

12 42 C.F.R. 438.3 ..... 12

13 42 C.F.R. 482.24 ..... 12

14 45 C.F.R. 164.316 ..... 12

15 **California Rules and Regulations**

16 Bus. & Prof. Code § 4081 ..... 12

17 Bus. & Prof. Code § 17200 ..... 1, 8

18 Civ. Code § 56 ..... 1, 8

19 Civ. Code § 56.10 ..... 6

20 Civ. Code § 56.26 ..... 6

21 Civ. Code § 56.36 ..... 6

22 Civ. Code § 1798 ..... 1, 5, 8

23 Civ. Code § 1798.53 ..... 5

24 Civ. Code § 1798.100 ..... 1

25 Health & Saf. Code § 121025 ..... 1, 6, 7, 8

26 Rule of Court 3.679 ..... 19

27 Rule of Court 3.764 ..... 18

28 Rule of Court 3.766 ..... 19, 20

Rule of Court 3.769 ..... 1, 15

Rule of Prof. Conduct 1.5.1 ..... 15

1 **California Civil Jury Instructions**

2 BAJI No. 7.20 (Sept. 2022 Update) ..... 7

3 BAJI No. 7.25.1 (Sept. 2022 Update) ..... 7

4 CACI No. 1800 (July 2022 Update)..... 7

5 **Other Authorities**

6 California Dep’t of Pub. Health, Office of AIDS,  
 7 <https://www.cdph.ca.gov/Programs/CID/DOA/Pages/OAadap.aspx>  
 8 (last visited July 19, 2023) ..... 3

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Plaintiff John Doe (“Plaintiff”) submits this Memorandum of Points and Authorities in Support  
2 of his Motion for Final Approval of the Class Action Settlement with Defendants California Department  
3 of Public Health and Dr. Tomás J. Aragón, in his official capacity as the Director of the California  
4 Department of Public Health (collectively, “CDPH”), Thrive Tribe Foundation (“Thrive Tribe”), Good  
5 Health, Inc. d/b/a Premier Pharmacy Services (“Premier Pharmacy” or “Premier”), Evolve Healthcare,  
6 Inc. (“Evolve Healthcare”), and Gary “Julian” Goldstein (hereinafter, “Defendants”).<sup>1</sup>

7 Rule 3.769 of the California Rules of Court provides the framework for approval of class action  
8 settlements. Rule 3.769(a) states that a class action settlement “requires the approval of the court after  
9 hearing.” Rule 3.769(g) states that “[b]efore final approval, the court must conduct an inquiry into the  
10 fairness of the proposed settlement.” This Memorandum summarizes the factors the Court is to consider  
11 in conducting a final review of a class action settlement and establishes why final approval is warranted.

## 12 I. INTRODUCTION

13 Plaintiff alleged on behalf of himself and other similarly situated individuals that their  
14 confidential medical and other personal information, including their HIV status, was accessed by Evolve  
15 Healthcare, Premier Pharmacy, and Mr. Goldstein without their consent.<sup>2</sup> Due to the stigma and  
16 discrimination associated with the disclosure of an individual’s HIV status, loss of control of such  
17 information can have far-ranging consequences, including loss of housing, employment, and severe  
18 health impacts. As a result, on August 25, 2020, John Doe filed a Class Action Complaint in the Superior  
19 Court of California, County of Los Angeles, alleging seven causes of action: (1) Information Practices  
20 Act of 1977, Civ. Code § 1798 *et seq.*; (2) AIDS Public Health Records Confidentiality Act, Health &  
21 Saf. Code § 121025 *et seq.*; (3) Confidentiality of Medical Information Act, Civ. Code § 56 *et seq.*;  
22 (4) Consumer Privacy Act of 2018, Civ. Code § 1798.100 *et seq.*; (5) Invasion of Privacy; (6) Negligence;  
23 and (7) Violation of Bus. & Prof. Code § 17200 *et seq.* An Amended Class Action Complaint was filed  
24 on October 6, 2022 adding Premier as a Defendant (“Amended Complaint”). The Settlement Class  
25 consists of 460 individuals who were enrolled in CDPH’s AIDS Drug Assistance Payment program  
26 (“ADAP”) and/or Office of AIDS Health Insurance Premium Payment program (“OA-HIPP”).

---

26 <sup>1</sup> Unless otherwise specified, all defined terms have the same meaning as the meaning described in the  
27 Executed Amended Settlement Agreement and Exhibits (“Settlement” or “Settlement Agreement”)  
28 submitted to the Court on May 9, 2023.

<sup>2</sup> Another Defendant, Adherence Project, was named in the initial Class Action Complaint but later  
dismissed from the action by this Court after Adherence Project deleted the data in question. (See Request  
for Dismissal of Adherence Project, Sept. 16, 2022.)

1 After three years of litigation and investigation, and two full-day mediation sessions with the  
2 Hon. Jan M. Adler (Ret.) and Ralph O. Williams III, Esq., the Parties entered into a Settlement Agreement  
3 that resolves the claims asserted in the Amended Complaint. This Settlement is the culmination of years  
4 of protracted negotiations that were non-collusive. (Declaration of Jerry Flanagan in Support of Motion  
5 for Final Approval of Class Action Settlement, Order Approving Payment of Attorneys' Fees and  
6 Reimbursement of Expenses, and Payment to the Class Representative ("Flanagan Decl."), ¶¶ 10, 25.)  
7 The public interest at stake in the *Doe Action* is significant and is being redressed under the terms of this  
8 Settlement. Plaintiff's counsel has determined that the Settlement is fair, reasonable, and adequate, and  
9 confers a substantial benefit to Settlement Class Members. And on May 19, 2023, the Court issued an  
10 Order that, *inter alia*, preliminarily approved the Settlement Agreement, preliminarily certified a  
11 settlement class, approving the form and content of the notice, and approving notice procedures  
12 ("Updated Preliminary Approval Order"). Plaintiff requests the Court enter a final judgment finally  
13 approving the Settlement Agreement so the terms of this settlement can be effectuated.

14 In total, the combined value of the Settlement exceeds \$3,900,000. (Flanagan Decl., ¶¶ 49, 59.)  
15 The primary goal of this litigation was to identify which entities and individuals were in possession of  
16 Plaintiff's and Settlement Class Members' confidential data and delete such data, or give the Settlement  
17 Class the option of deleting such data. The Settlement will provide substantial, meaningful, and  
18 immediate benefits for all Settlement Class Members by ensuring that their confidential information,  
19 including their HIV status, is protected. (Settlement Agreement, § 5.) This aspect of the settlement is a  
20 "fair, adequate, and reasonable" compromise because it is tailored to address Settlement Class Members'  
21 concerns by providing that the data in question maintained by Thrive Tribe, Evolve Healthcare,  
22 Goldstein, and Premier Pharmacy is appropriately identified, segregated, and destroyed and/or to provide  
23 the affected Settlement Class Members the right to request the data be deleted. (*Ibid.*) The conservative  
24 value of this non-monetary relief is \$2,300,000. (*Ibid.*; Flanagan Decl., ¶ 49.) The Settlement Agreement  
25 also details how the Settlement Administrator will use special, comprehensive methods to safeguard  
26 Protected Health Information and/or Confidential HIV-related Information, which is being paid for  
27 separately by CDPH up to a Settlement Administration Cap of \$40,000. (Flanagan Decl., ¶¶ 65, 79.)

28 The Settlement Agreement also provides an automatic Settlement Payment in the estimated  
amount of \$1,750 to each Settlement Class Member out of a \$1.6 million common fund. Settlement Class  
Members will not need to submit a claim form to receive the Settlement Payment. If, after the passing of

1 the deadline for negotiating all Settlement Payment checks as provided below, there are any residual  
2 funds, Plaintiff's counsel will make an application to the Court to approve a final distribution of any  
3 remaining funds be distributed to the proposed *cy pres* entity, AIDS Project Los Angeles ("APLA  
4 Health"). (Settlement Agreement, § 4.4.)

5 The terms of the settlement embodied in the Settlement Agreement are a fair, reasonable and  
6 adequate resolution of the claims at issue and thus should be finally approved. Plaintiff's counsel worked  
7 diligently to ensure that the Settlement Class received the best relief possible, tailored to the issues raised  
8 in litigation, in an expedited manner. As evidence of that reasonableness, at the time of this filing, *zero (0)*  
9 *Class Members have opted out of the Settlement and zero (0) Class Members have filed objections.*  
10 (Supplemental Declaration of Ryan M. Bahry Regarding Settlement Administration ("Bahry Decl."),  
11 ¶¶ 11, 13, attached as Ex. 1 to the Flanagan Decl.) Based on the facts set forth in the Flanagan Decl., as  
12 well as the favorable reaction of the members of the Settlement Class, Plaintiff requests this Court finally  
13 approve this settlement.

## 13 **II. DUNK/KULLAR ANALYSIS SUPPORTS FINAL APPROVAL OF THIS SETTLEMENT**

14 The Court may presume a settlement is fair if it is the result of arm's-length negotiation,  
15 investigation, and discovery sufficient to permit intelligent decisions about settlement; it involves counsel  
16 experienced in similar litigation; and the percentage of objectors is small. (*Dunk v. Ford Motor Co.*  
17 (1996) 48 Cal.App.4th 1794, 1802, *as modified* (Sept. 30, 1996).) It appears all these criteria are satisfied.  
18 The factual and legal basis for each legal claim, as well as a statement of the minimum statutory claims  
19 as summarized herein, "constitutes an adequate basis from which to garner a reasonably adequate  
20 'understanding of the amount that is in controversy' within the meaning of *Kullar*." (*Munoz v. BCI Coca-*  
21 *Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409, citing *Kullar v. Foot Locker Retail,*  
22 *Inc.* (2008) 168 Cal.App.4th 116.)

### 23 **A. Summary of Allegations in the Amended Complaint**

24 As alleged in the Amended Complaint, Thrive Tribe is a non-profit organization and former  
25 CDPH contractor responsible for enrolling the Settlement Class in the two programs, including all  
26 persons who were mailed a letter by CDPH in June 2020 advising them of the unauthorized disclosure.  
27 (Settlement Agreement, § 1.1(DD).) Thrive Tribe operated as a contractor of CDPH to enroll individuals  
28



1 in two HIV assistance programs overseen by CDPH—ADAP and OA-HIPP.<sup>3</sup> To enroll in these CDPH  
2 programs, Plaintiff and the Settlement Class Members provided their Protected Health Information  
3 and/or Confidential HIV-related Information to Thrive Tribe.<sup>4</sup> Plaintiff enrolled in ADAP and OA-HIPP  
4 through Thrive Tribe in or about April 2018. Plaintiff alleged that Goldstein, Evolve Healthcare, and  
5 their agents and employees had an agreement with Premier that, in exchange for referring Thrive Tribe’s  
6 ADAP and OA-HIPP enrollees to Premier for the purchase of their HIV medications, Premier provided  
7 financial compensation to them. Plaintiff alleged that at the direction of Goldstein, in or about April 2019,  
8 an individual simultaneously working with Thrive Tribe and as an agent, employee, or contractor of both  
9 Premier and Evolve Healthcare disclosed or caused to be disclosed, without written authorization from  
10 Plaintiff or members of the Settlement Class, their Protected Health Information and/or Confidential  
11 HIV-related Information to Premier and/or Evolve Healthcare. This scheme resulted in the unauthorized  
12 access to Plaintiff’s and the Settlement Class’s non-public, confidential information. (Amended  
13 Complaint, ¶¶ 2–9.) This Protected Health Information and/or Confidential HIV-related Information  
14 collected by Thrive Tribe on behalf of CDPH was allegedly uploaded to a database maintained and  
15 accessed by Mr. Goldstein and Evolve Healthcare to track Plaintiff and Settlement Class Members,  
16 ostensibly for purposes of obtaining referral fees from pharmacies. In addition, the Protected Health  
17 Information and/or Confidential HIV-related Information was allegedly emailed to Mr. Goldstein. At  
18 least some of this data was apparently also uploaded to Premier’s client database. (Amended Complaint,  
19 ¶¶ 35–113.) As part of the Settlement, a subsequent investigation by CDPH of a Premier prescription  
20 drug database, DocuTrak, revealed the confidential information of 125 Settlement Class Members.  
(Flanagan Decl., ¶¶ 13, 33; *see also* Settlement Agreement, § 5.3(A)–(B).)

21 Plaintiff alleged that neither Mr. Goldstein, Evolve Healthcare, Premier, nor any of their agents  
22 or employees were ever authorized by Plaintiff or Settlement Class Members to receive, use, or cause to  
23 be disclosed their Protected Health Information and/or Confidential HIV-related Information. Nor did

---

24 <sup>3</sup> CDPH subsidizes health insurance and medical costs for eligible HIV-positive Californians through the  
25 OA-HIPP program and pays prescription medication costs for the prevention and treatment of HIV for  
26 those enrolled in ADAP. (See California Dep’t of Pub. Health, Office of AIDS, <https://www.cdph.ca.gov/Programs/CID/DOA/Pages/OAadap.aspx> (last visited July 19, 2023).)

27 <sup>4</sup> This information included these individuals’ full names, dates of birth, personal phone numbers and  
28 email addresses, and health-related information such as HIV status and other medical conditions, health  
insurance provider information, public health program participant information, and program eligibility  
dates. As part of the ADAP and OA-HIPP enrollment process, Plaintiff and Settlement Class Members  
also provided Thrive Tribe copies of their driver’s licenses or passports and their IRS Form 1040s or  
other proofs of income.

1 these individuals seek such authorization. Plaintiff alleged Mr. Goldstein and Evolve Healthcare were  
2 never authorized by CDPH to receive or use Plaintiff’s and Settlement Class Members’ Protected Health  
3 Information and/or Confidential HIV-related Information. (Amended Complaint, ¶¶ 17, 44–89.) Plaintiff  
4 alleged that Thrive Tribe’s—and CDPH’s through its contractor Thrive Tribe—failure to adequately  
5 secure the Protected Health Information and/or Confidential HIV-related Information of Plaintiff and  
6 Settlement Class Members resulted in protected information being taken without authorization by Evolve  
7 Healthcare and Mr. Goldstein for the financial benefit of both themselves and Premier. (Amended  
8 Complaint, ¶¶ 90–113.) Defendants dispute these allegations.

9  
10 **1. Information Practices Act of 1977 (“IPA”)**

11 “Any person, other than an employee of the state or of a local government agency acting solely  
12 in his or her official capacity, who intentionally discloses information, not otherwise public, which they  
13 know or should reasonably know was obtained from personal information maintained by a state agency . . .  
14 shall be subject to a civil action, for invasion of privacy, by the individual to whom the information  
15 pertains.” (Civ. Code § 1798.53.) Furthermore, “[t]he right, remedy, and cause of action set forth in this  
16 section shall be nonexclusive and is in addition to all other rights, remedies, and causes of action for  
17 invasion of privacy, inherent in Section 1 of Article I of the California Constitution.” (*Ibid.*) Plaintiff  
18 alleged that Defendants’ failure to take actions that would have adequately secured personal and  
19 Confidential HIV-related Information of individuals enrolled in these CDPH programs from  
20 unauthorized access resulted in Protected Health Information and/or Confidential HIV-related  
21 Information being taken without authorization. (Amended Complaint, ¶¶ 123–140.)

22 Premier Pharmacy allegedly accessed the data in question through the scheme outlined in the  
23 Amended Complaint, resulting in Plaintiff’s and other similarly situated individuals’ personal and  
24 sensitive medical information being taken without authorization. Evolve Healthcare and Mr. Goldstein  
25 allegedly were agents and/or employees of Premier Pharmacy acting within the scope of their  
26 employment when they obtained without authorization Plaintiff’s and the Settlement Class’s Protected  
27 Health Information and/or Confidential HIV-related Information.

28 If Defendants’ conduct is determined to be intentional or attributable to them, the minimum  
statutory violation of the IPA is \$2,500 per incident. The IPA also permits an award of actual damages  
and attorneys’ fees and costs. (Civ. Code § 1798.53.) There was sufficient evidence that Defendants other  
than CDPH so acted (Flanagan Decl., ¶¶ 4, 15–16, 58.)

1                                   **2.       AIDS Public Health Records Confidentiality Act**

2           Public health records relating to HIV/AIDS containing personally identifying information that  
3 were developed or acquired by a state or local public health agency, such as CDPH, are confidential and  
4 shall not be disclosed, except as otherwise provided by law for public health purposes or pursuant to a  
5 written authorization by the person who is the subject of the record. (Health & Saf. Code § 121025(a).)  
6 Plaintiff alleges Defendants are jointly and severally responsible for the unauthorized disclosure of the  
7 records of Plaintiff and the Settlement Class that was obtained as a result of the acts of their agents,  
8 employees, and contractors. (Amended Complaint, ¶¶ 141–156.)

9           Each person who violates this statute is liable to the person whose confidential public health  
10 record was disclosed for an amount not less than \$5,000 and up to \$25,000, and the statute also permits  
11 an award of actual damages and attorneys’ fees and costs. (Health & Saf. Code § 121025(e)(1)–(e)(4).)  
12 There was sufficient evidence that Defendants other than CDPH so acted (Flanagan Decl., ¶¶ 4, 16, 59.)

13                                   **3.       Confidentiality of Medical Information Act (“CMIA”)**

14           Defendants violated the CMIA when they “disclose[d] medical information regarding a patient  
15 of the provider of health care or an enrollee or subscriber of a health care service plan without first  
16 obtaining an authorization[.]” (Civ. Code § 56.10; see also *id.* at § 56.26(a) [“No person or entity engaged  
17 in the business of furnishing administrative services to programs that provide payment for health care  
18 services shall knowingly use, disclose, or permit its employees or agents to use or disclose medical  
19 information possessed in connection with performing administrative functions for a program, except as  
20 reasonably necessary in connection with the administration or maintenance of the program, or as required  
21 by law, or with an authorization.”].) Each person who violates the CMIA is liable to the person whose  
22 confidential public health record was disclosed for an amount not less than \$1,000, and up to \$25,000 in  
23 administrative fines or civil penalties, compensatory damages, as well as possible disgorgement of profits,  
24 and the statute also permits an award of attorneys’ fees and costs. (Civ. Code § 56.36(b)(1), (c); Flanagan  
25 Decl., ¶ 60.)

26           To establish a claim for damages under this statute, Plaintiff does not need to establish the  
27 Defendants’ intent. Liability is established based on the disclosure without authorization of medical  
28 information possessed in connection with performing administrative functions for a healthcare-related  
program. Plaintiff alleges Premier is jointly and severally liable for the acts of Evolve Healthcare and Mr.  
Goldstein as agents and/or employees of Premier, who disclosed without authorization Plaintiff’s and

1 Settlement Class Members' Protected Health Information and/or Confidential HIV-related Information  
2 to Premier. (Amended Complaint, ¶¶ 157–175.)

3 The range of financial recovery of these three statutory damage claims is as follows:

4 **IPA.** If Defendants' conduct was determined to be intentional or attributable to them, the  
5 minimum statutory violation of the Information Practices Act is \$2,500, or \$1,150,000 for all 460  
6 Settlement Class Members, plus attorneys' fees and costs. (Civ. Code § 1798.53.)

7 **AIDS Public Health Records Confidentiality Act.** Each person who violates this statute is liable  
8 for an amount not less than \$5,000 for each impacted person, or \$2,300,000 for all 460 Settlement Class  
9 Members, up to \$25,000 per person, or \$11,500,000 for all Settlement Class Members, plus attorneys'  
10 fees and costs. (See Health & Saf. Code § 121025(e)(2).) The amount increases depending on the nature,  
11 extent, and intentionality of the disclosure.

12 **CMIA.** The minimum statutory violation for the CMIA is \$1,000 per person, or \$460,000 for all  
13 460 Settlement Class Members, up to \$3,500 per person (assuming non-willful conduct), or \$1,610,000  
14 for all Settlement Class Members, plus attorneys' fees and costs.

15 Collectively these statutes result in a potential for statutory damages in the lower range of \$8,500  
16 per class member. While an estimated payment amount of \$1,750 per Settlement Class Member is  
17 approximately 20% of that amount, considering the value of the programmatic relief provided to  
18 Settlement Class Members, the fact these were small organizations and individuals who could not  
19 contribute more than insurance could provide, and the risks of litigation, the Settlement provides for a  
20 fair and reasonable compromise of such claims. (See Flanagan Decl., ¶¶ 7, 56, 61–65.)

#### 21 **4. Invasion of Privacy**

22 Plaintiff alleges Defendants Premier, Evolve Healthcare, and Mr. Goldstein invaded or permitted  
23 the invasion of Plaintiff's and Settlement Class Members' right to privacy by allowing the unauthorized  
24 access to the Protected Health Information and/or Confidential HIV-related Information of Plaintiff and  
25 Settlement Class Members and by participating in obtaining and using the personal and medical  
26 information of Plaintiff and Settlement Class Members for their personal profit and benefit. (Amended  
27 Complaint, ¶¶ 176–185.)

28 This intrusion related to highly sensitive information, including Settlement Class Members' HIV  
status, which is entitled to be private. Plaintiff's and Settlement Class Members' Protected Health  
Information and/or Confidential HIV-related Information provided to Defendant Thrive Tribe as

1 enrollees in ADAP and OA-HIPP by contract and by law was intended to be kept confidential and  
2 protected from unauthorized disclosure. This intrusion was offensive and objectionable to Plaintiff and  
3 Settlement Class Members and would be so to a reasonable person of ordinary sensibilities. (*Ibid.*) The  
4 tort claim for Invasion of Privacy does not provide a range of statutory damages and only permits actual  
5 damages. However, damages flowing from an invasion of privacy logically would include an award for  
6 mental suffering and anguish. (See, e.g., *Fairfield v. Am. Photocopy Equipment Co.* (1955) 138  
7 Cal.App.2d 82, 89; BAJI Nos. 7.20, 7.25.1 [Sept. 2022 Update]; CACI No. 1800 [July 2022 Update].)  
8 The 50% amount of the Settlement Payment has been allocated for emotional distress related damages  
9 to provide compensation for this type of claim, including for negligence.

### 10 **5. Negligence**

11 Defendants Thrive Tribe, Goldstein, and Premier Pharmacy had a foreseeable duty to keep  
12 Plaintiff's and Settlement Class Members' private, non-public personal, medical, and health-related  
13 information private and confidential and/or to implement processes to detect unauthorized access to their  
14 computers or systems in a timely manner and to act upon any warnings or alerts that such computers or  
15 systems were improperly accessed. Defendants Thrive Tribe, Goldstein, and Premier Pharmacy had a  
16 foreseeable duty to Plaintiff and Settlement Class Members to exercise reasonable care to not access or  
17 permit the access of Plaintiff's and Settlement Class Members' non-public personal and medical  
18 information without authorization or consent, and/or to prevent such information from being accessed by  
19 unauthorized persons without their authorization or consent. (Amended Complaint, ¶¶ 186–191.) They  
20 also had a foreseeable duty to Plaintiff and Settlement Class Members to timely disclose any unauthorized  
21 access to their computers or systems. As with the claim for invasion of privacy, the claim for negligence  
22 does not provide a range of statutory damages and only permits actual damages, including emotional  
23 distress damages. (See, e.g., *Duarte v. Zachariah* (1994) 22 Cal.App.4th 1652, 1661–1664, *as modified*  
24 *on denial of reh'g* (Mar. 30, 1994).)

### 25 **6. Unfair Competition Law**

26 Defendants Thrive Tribe's, Mr. Goldstein's, and Premier's mishandling and misuse of Plaintiff's  
27 and Settlement Class Members' Protected Health Information and/or Confidential HIV-related  
28 Information constitutes an unlawful business practice because Defendants Thrive Tribe's,  
Mr. Goldstein's, and Premier's conduct violates California Civil Code sections 56 *et seq.* and 1798 *et*  
*seq.* and California Health & Safety Code section 121025, and constitutes an unlawful invasion of privacy

1 and negligence, all as set forth in detail above, as well as an unfair and fraudulent business practice.  
2 (Amended Complaint, ¶¶ 192–202.) Cal. Bus. & Prof. Code § 17200 *et seq.* provides for restitution and  
3 restitutionary disgorgement, as well as injunctive relief, which can be measured by the amount of monies  
4 Defendants made or saved as a result of the practices at issue. (See *Cortez v. Purolator Air Filtration*  
5 *Prod. Co.* (2000) 23 Cal.4th 163, 167–169.) This is the primary claim that is the focus of the injunctive  
6 relief part of this resolution. (*Ibid.*)

#### 7 **B. Summary of Settlement Negotiations**

8 If the Court finds the Settlement is the product of hard-fought arm’s-length negotiations  
9 conducted by experienced counsel knowledgeable in complex class litigation, the Settlement will enjoy  
10 a presumption of fairness. (See *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723; *see also*  
11 *Kullar, supra*, 168 Cal.App.4th at p. 129.) Because the history of this action paints a picture of hard-  
12 fought, protracted negotiations mediated in good faith and at arm’s length and resolved by experienced  
13 counsel, the Settlement Agreement is presumptively fair. (*Dunk, supra*, 48 Cal.App.4th at p. 1802.)

14 Soon after Plaintiff filed and served the Complaint, Defendants requested that the Parties engage  
15 in mediation, to which Plaintiff agreed. (Declaration of Daniel L. Sternberg in Support of Motion for  
16 Order Approving Attorneys’ Fees and Reimbursement of Expenses [“Sternberg Decl.”], ¶ 17.) On  
17 December 17, 2020, the Parties held a mediation session with former United States Chief Magistrate  
18 Judge Jan M. Adler (Ret.). Judge Adler is an extremely experienced mediator, particularly in complex  
19 litigation. (*Ibid.*) While the lawsuit did not resolve at that time, as a result of the groundwork laid during  
20 this full-day mediation, Plaintiff’s counsel began negotiations with CDPH and Premier over several  
21 months concerning the process for conducting a forensic review of Premier’s prescription database. (*Id.*,  
22 ¶¶ 18–22.) Plaintiff’s counsel also engaged in ongoing and exhaustive settlement discussions with the  
23 other defendants. (*Id.*, ¶¶ 23–27.) The information exchange during these negotiations informed both  
24 sides about the range of damages and the strengths and weaknesses of the claims and defenses.

25 Plaintiff’s counsel, CDPH, Thrive Tribe, Mr. Goldstein, and Premier Pharmacy participated in a  
26 second mediation with Ralph O. Williams III, Esq. of ADR Services on May 23, 2022. (*Id.*, ¶ 23.)  
27 Mr. Williams is also an extremely experienced mediator. (*Ibid.*) With the assistance of Mr. Williams, the  
28 Parties engaged in substantial additional negotiations over the next seven months. (*Id.*, ¶ 25.) After  
numerous follow-up discussions, the parties reached an agreement in principle to the terms of a resolution  
of the claims asserted in Amended Complaint. (*Id.*, ¶ 29.) On February 7, 2023, the Parties signed the

1 Settlement Agreement. (*Id.*, ¶ 31.)

2 Thus, the Settlement Agreement was reached only after ongoing negotiations that spanned more  
3 than two years, including two mediations with separate mediators and extensive discussions about the  
4 strengths and weaknesses of the claims and defenses. These negotiations were non-collusive and entered  
5 into after an extensive review of relevant information. The fact that two neutral third parties oversaw the  
6 mediations further evidences the non-collusive nature of the negotiations. (See generally *Dunk, supra*,  
7 48 Cal.App.4th at pp. 1802–1803 [affirming approval of settlement where the “independent mediator, a  
8 retired superior court judge and appellate justice with substantial experience and respect in the legal  
9 community, recommended the settlement”].)

### 10 **III. THE TERMS OF THE SETTLEMENT AGREEMENT ARE REASONABLE**

#### 11 **A. The Consideration Being Received for the Release of Class Members’ Claims Is Reasonable**

12 In determining whether the settlement fair, adequate, and reasonable, “[t]he most important factor  
13 is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.”  
14 (See *Kullar, supra*, 168 Cal.App.4th at p. 130 [internal citations omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250, *disapproved of on other grounds in Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.) Where a settlement is reached through arm’s-length bargaining,  
16 where investigation is sufficient to allow counsel and the Court to act intelligently, where counsel is  
17 experienced in similar litigation, and where the Class supports the settlement, the settlement is presumed  
18 to be fair. (*Wershba, supra*, 91 Cal.App.4th at p. 245.) Such a presumption is properly invoked here. The  
19 primary goal of the *Doe Action* was to identify and delete Plaintiff’s and Settlement Class Members’  
20 Protected Health Information and/or Confidential HIV-related Information, or provide Plaintiff and  
21 Settlement Class Members the right to request the data be deleted. This goal has been achieved in the  
22 Settlement. The Settlement Agreement provides that the Settlement Class includes all persons to whom  
23 the CDPH Mailing was mailed, provided, or sent for delivery, as identified on the Class List, and all  
24 people whose data was improperly shared will be given the opportunity to have that data deleted.  
25 (Flanagan Decl., ¶ 29.) In addition, Settlement Class Members who do not opt out of the settlement will  
26 automatically receive an estimated Settlement Payment of \$1,750. (*Id.*, ¶ 36.)

27 Focusing first on the injunctive components of the Settlement, this Settlement provides  
28 substantial, meaningful, and immediate benefits for all Settlement Class Members by ensuring that their

1 confidential information, including their HIV status, is protected. (Settlement Agreement, § 5.) This  
2 aspect of the settlement is a “fair, adequate, and reasonable” compromise because it is tailored to address  
3 these concerns by providing that the data in question maintained by Thrive Tribe, Mr. Goldstein, Evolve  
4 Healthcare, and Premier Pharmacy is appropriately identified and destroyed or by providing individuals  
5 the right to request the data be deleted. Specifically, in Section 5 of the Settlement Agreement, each of  
6 the Defendants are taking specific actions summarized below.

7 Thrive Tribe agrees to take the following actions:

- 8 • Thrive Tribe shall destroy any computer hard drives and other storage devices of any kind that  
9 may contain any confidential information relating to Settlement Class Members. The data that  
10 must be destroyed includes any private, personal, and medical information (excluding name,  
11 address, or other contact information) of any individuals who Thrive Tribe enrolled in the ADAP  
12 and OA-HIPP programs prior to June 2019.
- 13 • Thrive Tribe shall permanently delete any confidential or other information relating to Settlement  
14 Class Members stored in the cloud or on servers.
- 15 • Thrive Tribe shall destroy any hard copies of any information that contain any confidential or  
16 other identifying information for all Settlement Class Members.
- 17 • A representative of Thrive Tribe will provide an affidavit under penalty of perjury that Thrive  
18 Tribe complied with these requirements. CDPH shall have the right, at its sole discretion, to  
19 decide whether to audit the veracity of the affidavit by completing a site inspection of all computer  
20 systems, storage devices, and/or cloud storage and/or servers.

21 (Settlement Agreement, §§ 5.1–5.2; Flanagan Decl., ¶ 32.)

22 Premier Pharmacy agrees to take the following actions:

- 23 • Premier Pharmacy will participate in a forensic review of its email system and OneDrive system  
24 to be conducted by CDPH to determine if it contains any Settlement Class Member’s Protected  
25 Health Information and/or Confidential HIV-related Information. Premier represents that to the  
26 extent Premier’s computer systems contain a Settlement Class Member’s Protected Health  
27 Information and/or Confidential HIV-related Information, such information can be electronically  
28 stored only (1) on Premier’s servers (and those servers can be accessed and searched, in full, by  
the DocuTrak system), (2) within Premier’s email system, or (3) on an individual user’s computer  
(and those individual computers can be searched, in full, on the OneDrive system). Premier  
further represents that any such information stored on its servers can be, and already has been,  
searched by CDPH in the prior forensic review of Premier’s DocuTrak system, which revealed  
the confidential information of 125 Settlement Class Members.
- Premier Pharmacy will provide any Settlement Class Member who does not opt out of the  
Settlement and whose information is identified by CDPH as possibly having been entered in any  
Premier Pharmacy server (as identified by the DocuTrak system), email system, or OneDrive  
system, for the first time after April 1, 2019 (including the 125 Settlement Class Members whom  
CDPH previously identified) the opportunity to remove his, her, or their Protected Health  
Information and/or Confidential HIV-related Information.
- Settlement Class Members whose confidential information is discovered in Premier’s computer



1 systems will be sent a Supplemental Notice providing the opportunity to remove their  
2 information. This procedure is designed to guarantee continuity of care for Settlement Class  
3 Members in the event those Settlement Class Members are now obtaining medications from  
4 Premier.

- 5 • Premier Pharmacy is required to retain certain data pursuant to state law, federal law, and provider  
6 contracts.<sup>5</sup> If state law, federal law, or a provider contract prohibits Premier from immediately  
7 deleting the Class Members' data, then Premier will (1) render the Class Members' data inactive  
8 in a manner agreed to by Premier, Co-Lead Class Counsel, and CDPH (or as directed by the Court  
9 if agreement cannot be reached), and (2) not use, sell, convey, or transfer that data in any way  
10 except as required by state law, federal law, or provider contract. Premier will delete all applicable  
11 data following the first date when such deletion would not violate any applicable state law, federal  
12 law, or provider contract provision. CDPH, and Co-Lead Class Counsel as necessary, will confer  
13 with Premier periodically after the Effective Date to confirm such data has been deleted in  
14 conformance with the parties' agreed-to deletion schedule. (Flanagan Decl., ¶ 22; Settlement  
15 Agreement, § 5.3(D).)
- 16 • A representative of Premier further agrees to provide an affidavit under penalty of perjury that  
17 Premier has complied with these requirements. If any data must be rendered inactive and retained  
18 as noted above, Premier will provide an additional affidavit under penalty of perjury within 30  
19 calendar days after permanently deleting any previously inactive and retained data. CDPH shall  
20 have the right, at its sole discretion, to decide whether to audit the veracity of either affidavit by  
21 completing a further inspection of Premier's servers, DocuTrak system, OneDrive System, and/or  
22 email system.

23 (Settlement Agreement, § 5.3(A)–(E); Flanagan Decl., ¶ 33.) Premier and CDPH are in the process of  
24 having CDPH engage in the data review of Premier's computer systems as contemplated under the  
25 Settlement. (Flanagan Decl., ¶ 33.)

26 Evolve Healthcare and Mr. Goldstein agree to take the following actions:

- 27 • Evolve Healthcare and Goldstein will participate in a forensic review of a laptop computer, which  
28 Evolve Healthcare and Goldstein represent is the only potential location of stored files in their  
29 possession, custody, or control, to be conducted by CDPH to determine if that laptop computer  
30 contains any Settlement Class Member's Protected Health Information and/or Confidential HIV-  
31 related Information.
- 32 • Evolve Healthcare and Goldstein will provide any Settlement Class Member who does not opt  
33 out of the Settlement and whose information is identified by CDPH as possibly having been  
34 entered in the laptop computer for the first time after April 1, 2019 the opportunity to remove his,  
35 her, or their name and any Protected Health Information and/or Confidential HIV-related  
36 Information. Settlement Class Members whose confidential information is discovered in Evolve

---

37 <sup>5</sup> "All records of manufacture and of sale, acquisition, receipt, shipment, or disposition of" prescription  
38 medications "shall be at all times during business hours open to inspection by authorized officers of the  
39 law, and shall be preserved for at least three years from the date of making." (Cal. Bus. & Prof. Code  
40 § 4081.) Under federal law, pharmacies must comply with Medicare laws and regulations and Centers  
41 for Medicare & Medicaid Services ("CMS") instructions and guidelines. CMS requires that records be  
42 maintained for a period of ten years. (42 C.F.R. §§ 423.505(d), 423.505(e), 423.505(i)(2); see also *id.*  
43 § 438.3(h) [providers shall allow the Medicaid program and other government agencies to inspect certain  
44 records for a period of ten years]; 45 C.F.R. § 164.316(b)(2) [six-year record retention requirement]; 42  
45 C.F.R. § 482.24(b)(1) [five-year record retention requirement].)

1 Healthcare or Goldstein’s laptop computer will be sent a Supplemental Notice providing the  
2 opportunity to remove their information. This procedure is designed to guarantee continuity of  
care for Settlement Class Members in the event that those Settlement Class Members are now  
obtaining healthcare services from Evolve Healthcare or Goldstein.

- 3 • Evolve Healthcare and Goldstein further agree to provide an affidavit under penalty of perjury  
4 that Evolve Healthcare and Goldstein complied with these requirements. CDPH shall have the  
right, at its sole discretion, to decide whether to audit the veracity of the affidavit.

5 (Settlement Agreement, § 5.4(A)–(D); Flanagan Decl., ¶ 34.) Goldstein has delivered his laptop computer  
6 to CDPH so it can engage in the data review contemplated under the Settlement. (Flanagan Decl., ¶ 34.)

7 The estimated combined value of the non-monetary relief is \$2,300,000, based on a conservative \$1,000  
8 statutory damages calculation under the CMIA penalty basis. (Flanagan Decl., ¶ 49.) Settlement Class  
9 Members will benefit from the programmatic relief, which provides significant protection against future  
10 unauthorized disclosure of the Protected Health Information and/or Confidential HIV-related Information  
11 of these individuals. (Settlement Agreement, § 5.)

12 In addition to the non-monetary component of the Settlement, Settlement Class Members will  
13 receive an automatic cash payment in the estimated amount of \$1,750. The amount of the Settlement  
14 Payment is “estimated” because it is dependent on the number of Settlement Class Members who opt out  
15 of the Settlement and the number of Notices of Settlement returned as undeliverable, because Settlement  
16 Payments will not be sent to those individuals. (Settlement Agreement, § 4.2; see also *id.*, Exhibits E and  
17 H.) Because these payments and the number of opt-outs and undeliverable Notices of Settlement will not  
18 be known until the Settlement administration process is complete, the final amount of the Settlement  
Payment may be lower or higher than the estimated payment. (*Ibid.*)

19 As detailed above, the financial aspect of the package is also well within the range of what  
20 Plaintiff could have obtained at trial and is of significantly more value because it will be received by  
21 Settlement Class Members sooner than could have been accomplished without a settlement and absent  
22 the risks of litigation. Moreover, the Settlement Payment will be automatically provided without the need  
23 to submit a claim form, ensuring the vast majority of Settlement Class Members will receive payment.

24 If Defendants are found to have intentionally disclosed or requested the disclosure of Plaintiff’s  
25 and Settlement Class Members’ Protected Health Information and/or Confidential HIV-related  
26 Information (which would be disputed), the amount each of the 460 individuals affected by the breach  
27 could obtain from each Defendant is between a minimum of \$8,500 per person if all three of the statutory  
28 claims were established (and \$1,000 if only the CMIA claim was established against one of the

1 Defendants) and a maximum of \$28,500 per person in statutory damages. (Flanagan Decl., ¶¶ 57, 60.)  
2 That results in a minimum exposure of \$460,000 and a maximum exposure of \$14,260,000 per  
3 Defendant, not including attorneys’ fees and costs. (*Id.*, ¶¶ 57–60.) If Settlement Class Members only  
4 prevailed on the CMIA claim on a class-wide basis, their monetary recovery under the Settlement  
5 Agreement would exceed the \$1,000 per person amount.

6 The payment to each Settlement Class Member under the Settlement Agreement is between  
7 approximately 5 and 20 percent of all possible statutory damages if Settlement Class Members recovered  
8 on all claims for which there are statutory damages. Percentage recoveries in this range have been found  
9 to be a reasonable range of recovery. (See *Wershba, supra*, 91 Cal.App.4th at p. 250, finding settlement  
10 in range of 12 percent of possible damages is reasonable]; *Dunk, supra*, 48 Cal.App.4th at pp. 489–494  
11 [affirming settlement whereby class members would receive coupon redeemable for \$400 off price of  
12 new vehicle bought, reflecting two-thirds of maximum damages amount to each class member but  
13 requiring the expenditure of additional funds].)

14 For settlement purposes, the theoretical trial recovery must be tempered by litigation risks and  
15 uncertainties, which are significant here. Most important here, as set forth above, even if liability were  
16 established at trial, Plaintiff faced the reality that he would not be able to collect on such amounts. This  
17 is because Defendants are generally small entities or individuals that could realistically only contribute  
18 the remaining amounts of their insurance policies where available, which they did. (Flanagan Decl., ¶¶ 7,  
19 56, 61–65.) While the claims contended here are meritorious, the value of those claims in light of the  
20 possibility that one or more of Defendants’ defenses to these claims might be accepted is an important  
21 settlement consideration. Depending on the level of intent required to prove a claim, statutory damages  
22 may not be available for all these claims. The determination of damages is a complicated and uncertain  
23 process, and typically involves conflicting expert opinions. The reaction of a jury to such complex expert  
24 testimony is highly unpredictable. This give-and-take is the hallmark of arms’-length negotiations.  
25 (Flanagan Decl., ¶¶ 56–65.)

#### 26 **B. Release of Claims**

27 The scope of the release provision is appropriate as it is limited to those claims arising out of the  
28 Amended Complaint. (Settlement Agreement, Section 7). The “Released Claims” under the Settlement  
Agreement include “any and all liabilities, rights, claims, actions, causes of action, demands, damages,  
penalties, costs, attorneys fees, losses, and remedies, existing or potential, suspected or unsuspected,

1 liquidated or unliquidated, legal, statutory, or equitable, that are based on the facts alleged in the  
2 Amended Complaint.” This release is appropriately limited to the allegations in the Amended Complaint.

3 **C. Class Notice**

4 The Notice of Settlement approved by the Court contains relevant information about the  
5 Settlement and the deadlines to opt out and object, directs Settlement Class Members to the Settlement  
6 website, and provides a toll-free number that Settlement Class Members can call for general information,  
7 in English and Spanish, about the Settlement. (Flanagan Decl., ¶ 40). The Settlement website contains  
8 downloadable .pdf copies of the Complaint and Amended Complaint, the Amended Settlement  
9 Agreement and its Exhibits, the Notice of Settlement, the Updated Preliminary Approval Order, the  
10 Supplemental Notice, a list of Settlement deadlines set in the Updated Preliminary Approval Order, the  
11 proposed Final Approval Order, the Court’s Judgment and Final Approval Order when entered, and other  
12 case documents relevant to the Settlement, as well as a “Frequently Asked Questions” webpage.  
13 (Settlement Agreement, § 3.4; Flanagan Decl., ¶ 45; Bahry Decl., ¶ 6.) The parties have worked together  
14 in good faith to agree on the content of the website as well as the interactive voice recordings (IVR) used  
15 by the Settlement Administrator for the toll-free information telephone line. (Settlement Agreement,  
16 § 3.5; Flanagan Decl., ¶ 46; Bahry Decl., ¶ 8.)

17 If any Notices of Settlement are returned undeliverable without forwarding addresses provided,  
18 the Settlement Administrator performed a search of the name and, if from a reliable source such as the  
19 United States Postal Service and the Settlement Administrator was highly confident the notice package  
20 would be delivered, they forwarded that package to the new address. So far, 40 settlement packages have  
21 been remailed to Settlement Class Members. Thus, all Settlement Class Members who could be identified  
22 through reasonable effort will have received the Notice of Settlement. (Bahry Decl., ¶ 5.)

23 **D. Attorneys’ Fees and Expenses**

24 As a term of the Settlement and subject to Court approval, attorneys for Plaintiff and the  
25 Settlement Class are separately applying to the Court for approval of a payment of attorneys’ fees and  
26 reimbursement of expenses not exceeding \$763,000 for their work prosecuting and successfully resolving  
27 this action. (Settlement Agreement, § 8.1; Flanagan Decl., ¶ 67.) Co-Lead Class Counsel have agreed to  
28 share attorneys’ fees based in part on their respective lodestar and the client has given written approval  
of the fee sharing agreement. (Flanagan Decl., ¶ 12; *Mark v. Spencer* (2008) 166 Cal.App.4th 219, 225–  
226, 228, *as modified on denial of reh’g* (Sept. 17, 2008); Cal. Rules of Professional Conduct, § 1.5.1;

1 Cal. Rules of Court, Rule 3.769(b).) Also, John Doe is requesting to receive, subject to Court approval,  
2 a \$10,000 incentive award for spending over 75 hours assisting in the litigation and successful settlement  
3 of the claims. (Settlement Agreement, § 8.2; Flanagan Decl., ¶ 77; Declaration of John Doe, ¶ 8, attached  
4 as Exhibit 2 to the Declaration of Daniel L. Sternberg in Support of Preliminary Approval, Feb. 7, 2023.)  
5 This amount was agreed to after the other material terms of the settlement had been agreed upon between  
6 the Parties and was not conditioned on the acceptance of the terms of Settlement. (Flanagan Decl., ¶ 78.)

7 While addressed in more detail in the separately submitted motion for payment of attorneys' fees  
8 and reimbursement of expenses, the proposed Class representative's award is reasonable. (See *Clark v.*  
9 *Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 807 [time and efforts expended by Class  
10 representative is a critical factor in determining reasonableness of a Class representative enhancement];  
11 *Radcliffe v. Experian Information Solutions Inc.* (9th Cir. 2013) 715 F.3d 1157, 1165 [fact a Class  
12 representative's enhancement award was not conditioned on the acceptance of the terms of settlement is  
13 an indicator the enhancement is reasonable].)

#### 13 **E. Payment of Costs and Notice and Settlement Administration**

14 Under the Settlement, CDPH is separately paying all costs associated with disseminating the  
15 Settlement Notice, the Settlement Administrator, the settlement website, the toll-free number, and all  
16 associated expenses, up to the Settlement Administration Cap of \$40,000, in which case any additional  
17 amounts will be paid out of the settlement fund.

### 18 **IV. THIS SETTLEMENT SHOULD BE FINALLY APPROVED**

#### 19 **A. The Settlement Is Entitled to a Presumption of Fairness**

20 As set forth in detail above and in the Flanagan Decl. and Sternberg Decl. this case has been  
21 pending for three years. The Parties engaged in extensive settlement negotiations lasting over two years,  
22 which were overseen by two mediators. (Sternberg Decl., ¶¶ 17, 23.) The parties have been represented  
23 by experienced class action and data breach litigators, who view this settlement favorably. (See Flanagan  
24 Decl., ¶ 65.) The best interests of the Settlement Class remained Co-Lead Class Counsel's paramount  
25 consideration throughout the entire course of settlement discussions. (*Id.*, ¶ 48.) The Settlement  
26 Agreement meets this Court's presumption of fairness. (*Kullar, supra*, 168 Cal.App.4th at p. 128.)

#### 27 **B. The Proposed Settlement Is Fair, Reasonable, and Adequate**

28 The settlement of disputed claims is highly favored by California courts. (*Stambaugh v. Super.*  
*Ct.* (1976) 62 Cal.App.3d 231, 236.) There is a strong judicial policy favoring settlement of class action

1 litigation. (*Bell v. Am. Title Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607–08.) In granting final approval  
2 of a class action settlement, the Court’s inquiry is to determine that the settlement was not the product of  
3 fraud or collusion and is fair, adequate, and reasonable. (See *Dunk, supra*, 48 Cal.App.4th at p. 1800.)

4 In *Dunk*, the Court endorsed the trial court’s examination of the following factors in determining  
5 whether a class action settlement is fair, reasonable, and adequate: (1) the amount offered in the  
6 settlement; (2) the risks involved in continued litigation; (3) the risk of maintaining class action status  
7 through trial; (4) the complexity, expense, and duration of litigation; (5) the experience and views of  
8 counsel; (6) the reaction of the class members to the proposed settlement; and (7) the stage of proceedings  
9 at which the settlement was achieved. (*Id.* at p. 1801.)

### 10 **1. The Relief Offered in the Settlement**

11 In determining when a settlement is fair, adequate, and reasonable, the “most important factor is  
12 the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.”  
13 (*See Kullar, supra*, 168 Cal.App.4th at p. 130.) Here, the Settlement is a “fair, adequate, and reasonable”  
14 (*ibid.*) compromise because (a) Settlement Class Members will benefit from the data review and  
15 destruction practices to protect the sanctity of their data, and (b) all Settlement Class Members will  
16 receive their settlement payment automatically without having to file a claim.

17 Plaintiff filed this action to remedy alleged mishandling of Settlement Class Members’ protected  
18 health information. This Settlement is designed to ensure the underlying issues are resolved, and ensures  
19 they receive the benefits of that relief immediately. The programmatic and financial relief is not only  
20 within the range, but likely far exceeds, what Plaintiff could have obtained at trial given the nature of  
21 underlying issues. (Flanagan Decl., ¶¶ 7–8, 56–57.) The amount each Settlement Class Member will  
22 receive in settlement is also reasonable considering the financial condition of Defendants, the amounts  
23 paid from insurance proceeds, and the underlying risks of litigation that made it unlikely to obtain any  
24 more at trial.

### 25 **2. Risks of Establishing Liability and the Risk of Maintaining Class Action 26 Status through Trial**

27 Even under a best-case analysis, there would be long delays before a Settlement Class Member  
28 would receive recovery. As such, this recovery is more favorable than what they could have hoped to  
recover even if successful at every stage of the litigation, which, including appeals, could extend for the  
next several years. Although Plaintiff believes he would overcome the obstacles presented, there are risks

1 in litigation and particularly in complex litigation such as this. There is a risk the class will not be  
2 certified, claims will not survive summary judgment, or that a jury or judge would not accept their claims  
3 for relief. Even assuming a 50% chance of obtaining full relief at each of these three separate milestones,  
4 this would support finding a recovery of 12.5% of total damages reasonable even if non-state Defendants  
5 had the ability able to pay a judgment for a greater amount—which based on Plaintiff’s counsel’s  
6 investigation, they did not. (See Flanagan Decl., ¶ 60.)

7 This factor weighs in favor of the approval of the Settlement. Defendants have denied any  
8 wrongdoing or liability to Plaintiff or members of the Settlement Class. A trial on the merits would  
9 require resolution of numerous complex issues of law and fact that would be contested by Defendants  
10 during trial. The difficulties inherent in this complex action can cause delays that can eliminate the  
11 opportunity for timely and meaningful recovery by Settlement Class Members. These considerations  
12 posed a substantial risk in the litigation. (See Flanagan Decl., ¶¶ 56–65.) Additionally, the Settlement  
13 Class has been preliminarily certified for settlement purposes only.<sup>6</sup> If this case were to proceed to trial,  
14 Defendants would undoubtedly contest class certification. Plaintiff therefore faces the risk that a motion  
15 for class certification would be denied, and even if granted, class certification orders are conditional in  
16 nature and may be changed, modified, or reversed at any time up until final judgment. (Cal. Rules of  
17 Court, rule 3.764; *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 438, *as modified* (Aug. 9, 2000);  
18 *Occidental Land, Inc. v. Super. Ct.* (1976) 18 Cal.3d 355, 360; *Weinstat v. Dentsply Intern. Inc.* (2010)  
19 180 Cal.App.4th 1213, 1226.)

### 20 3. Complexity, Expense, and Likely Duration of the Litigation

21 Unless the proposed Settlement is clearly inadequate on its face, its approval by the Court is  
22 preferable to the continuation of lengthy and expensive litigation. (*Wershba, supra*, 91 Cal.App.4th at  
23 p. 250.) The relief available to Settlement Class Members obviates the need for lengthy, uncertain, and  
24 expensive trial and appeals. Significant additional work would be necessary if the case were to proceed  
25 to trial. A trial on the merits would entail considerable expense, including numerous experts, pre-trial  
26 motions, and thousands more hours of attorney time, and given the right to appeal, trial would not  
27 necessarily end the litigation. (See Flanagan Decl., ¶ 64.)

28 <sup>6</sup> The final approval order should finally certify the Settlement Class, as nothing has revealed itself since  
the Court entered the preliminary approval order that would justify not certifying the Settlement Class.

1                   **4. Experience and Views of Counsel**

2                   As noted in the factors set forth in *Wershba, supra*, when the counsel recommending approval of  
3 the Settlement are competent and experienced, significant weight may be given to their opinion. The  
4 Settlement Class has been represented by counsel with years of experience in litigating class and  
5 healthcare and HIV privacy actions who have entered into numerous class and public interest settlements  
6 that have been approved by courts throughout California, and support this settlement. (91 Cal.App.4th at  
7 p. 245; see Flanagan Decl., ¶ 66; Sternberg Decl., ¶¶ 49–64, Ex. 1.)

8                   **5. Reaction from the Settlement Class**

9                   That zero requests for exclusions and zero objections have been filed at the time of this filing  
10 should be taken as an indication of significant support for the Settlement Agreement among Settlement  
11 Class Members. (See *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th  
12 1135, 1152–53 [court found the response of class members “overwhelmingly positive” where a “mere  
13 80 [out] of the 5,454 national class members elected to opt out”]; see also *Nat. Gas Anti-Trust Cases, I,*  
14 *II, III & IV* (Cal. Super. Ct. Dec. 11, 2006) Nos. 4221, 4228, 4224, 4226, 2006 WL 5377849 at \*2, citing  
15 *Stoetznner v. U.S. Steel Corp.* (3d. Cir. 1990) 897 F.2d 115, 118–19 [“When relatively few class members  
16 object to or exclude themselves from a class action settlement, courts interpret that response as evidence  
17 that the settlement warrants final approval.”].)

18                   **6. The Stage of the Proceedings at Which Settlement Was Achieved**

19                   The action was settled three years after it was filed, and after more than two years of thorough,  
20 protracted, and exhaustive negotiations. (See Sternberg Decl., ¶¶ 17–30.)

21                   **V. THE NOTICE PLAN COMPLIED WITH THIS COURT’S PRELIMINARY**  
22 **APPROVAL ORDER AND APPLICABLE LEGAL STANDARDS**

23                   The purpose of class notice is to provide class members with sufficient information to decide  
24 whether to accept the benefits of the proposed settlement, object, or opt out. (See *In re Vitamin Cases*  
25 (2003) 107 Cal.App.4th 820, 828.) Regarding the content of the notice, the “notice given to the class  
26 must fairly apprise the class members of the terms of the proposed compromise and of the options open  
27 to dissenting class members.” (*Trotsky v. Los Angeles Fed. Sav. & Loan Ass’n* (1975) 48 Cal.App.3d  
28 134, 151–152, *disapproved of on other grounds in Hernandez, supra*, 4 Cal.5th 260; Cal. Rules of Court,  
rule 3.766(d); see Cal. Rules of Court, rule 3.679(f).) The content of the Notice plan was approved by  
the Court and has been complied with by the Settlement Administrator.



1 The standard in this Court for a notice program is to ensure the “notice has a reasonable chance  
2 of reaching a substantial percentage of the class members.” (*Wershba, supra*, 91 Cal.App.4th at p. 230,  
3 internal citations omitted.) Pursuant to the Updated Preliminary Approval Order, mailed notice was sent  
4 out by JND, the Court-appointed Settlement Administrator, by first class mail on or about June 16, 2023,  
5 to each of the 460 Settlement Class Member’s last known address as reflected in the records of CDPH  
6 and as updated by the Settlement Administrator. (Bahry Decl., ¶ 4.) The Settlement Notice referred  
7 Settlement Class Members to the settlement website ([www.ThriveTribeSettlement.com](http://www.ThriveTribeSettlement.com)) created by the  
8 Settlement Administrator for purposes of obtaining detailed information relating to the terms of the  
9 Settlement and including relevant deadlines and the date of this hearing. (Bahry Decl., ¶ 6.) Also pursuant  
10 to the Updated Preliminary Approval Order, the Settlement Notice was made available to the public in  
11 English and Spanish on the settlement website. (*Ibid.*) The Notice of Settlement (“Notice”) provided a  
12 toll-free number to allow Settlement Class Members to obtain detailed information relating to the terms  
13 of the Settlement and directed Settlement Class Members to the settlement website. (*Id.* at ¶ 8.) The  
14 settlement website also provides the toll-free telephone support line number in English and Spanish, the  
15 mailing address for the Settlement Administrator, contact information for Co-Lead Class Counsel,  
16 answers to “Frequently Asked Questions,” and court-imposed deadlines. (*Id.* at ¶¶ 7–8.)

16 As of this filing, the settlement administration program has been successful. 47 Notices have been  
17 returned as undeliverable. (*Id.*, ¶ 5.) JND ran an address search and updated any addresses where they  
18 were highly confident they had a correct updated address, and re-mailed Notices to those updated  
19 addresses. (*Ibid.*; Flanagan Decl., ¶ 42.) In addition, there have been 19 phone calls with the toll-free  
20 number and 169 unique users with over 933 page views on the Settlement website. (Bahry Decl., ¶¶ 7,  
21 9.) Pursuant to the Court’s Updated Preliminary Approval Order, JND will provide an updated report on  
22 the completion of the Class Notice program prior to the final approval hearing. (Flanagan Decl., ¶ 43.)

23 The mailed Notice, the settlement website, and toll-free telephone support line provided the most  
24 reasonable chance of reaching all of the members of the Settlement Class and satisfy applicable legal  
25 requirements, as well as applicable California Rules of Court. (See *Chavez v. Netflix* (2008) 162  
26 Cal.App.4th 43, 58; Cal. Rules of Court, rule 3.766(f).) The Notices provided all the required information.  
(Flanagan Decl., ¶ 39.)

## 27 VI. CONCLUSION

28 For the reasons stated above, Plaintiff requests the Court finally approve this Settlement.

1 DATED: July 20, 2023

Respectfully submitted,

2 **CONSUMER WATCHDOG**

3 

4 Jerry Flanagan (SBN: 271272)  
5 jerry@consumerwatchdog.org  
6 Daniel L. Sternberg (SBN: 329799)  
7 danny@consumerwatchdog.org  
8 6330 San Vicente Blvd., Suite 250  
9 Los Angeles, CA 90048  
10 Tel: (310) 392-0522  
11 Fax: (310) 392-8874

12 **WHATLEY KALLAS, LLP**

13 

14 Alan M. Mansfield (SBN: 125998)  
15 amansfield@whatleykallas.com  
16 16870 W. Bernardo Dr., Suite 400  
17 San Diego, CA, 92127  
18 Tel: (858) 674-6641  
19 Fax: (855) 274-1888

20 *Attorneys for Plaintiff*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**  
**State of California, County of Los Angeles**

I am employed in the City and County of Los Angeles in the State of California. I am over the age of 18 years and not a party to the within action. My business address is 6330 San Vicente Boulevard, Suite #250, Los Angeles, California 90048, and I am employed in the city and county where this service is occurring.

On July 20, 2023, I caused service of true and correct copies of the document entitled  
**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

upon the persons named in the attached service list, in the following manner:

SEE ATTACHED LIST

**(BY EMAIL OR ELECTRONIC SERVICE)** Per the Court's Order dated October 22, 2020 authorizing electronic service, I caused the above-entitled document to be served through Case Anywhere addressed to all parties appearing on the Case Anywhere electronic service list for the above-entitled case.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 20, 2023, at Los Angeles, California.

  
Kaitlyn Gentle

1  
2 **Service List**

3 **WHATLEY KALLAS, LLP**

*Attorneys for Plaintiff John Doe*

4 Joe R. Whatley, Jr.  
5 jwhatley@whatleykallas.com  
6 Edith M. Kallas  
7 ekallas@whatleykallas.com  
8 152 W. 57th Street, 41st Floor  
9 New York, NY 10019  
10 Tel: (212) 447-7060  
11 Fax: (800) 922-4851

12 **WHATLEY KALLAS, LLP**

*Attorneys for Plaintiff John Doe*

13 Alan M. Mansfield  
14 amansfield@whatleykallas.com  
15 16870 W. Bernardo Dr., Suite 400  
16 San Diego, CA, 92127  
17 Tel: (858) 674-6641  
18 Fax: (855) 274-1888

19 **WHATLEY KALLAS, LLP**

*Attorneys for Plaintiff John Doe*

20 Henry C. Quillen  
21 hquillen@whatleykallas.com  
22 159 Middle Street, Suite 2C  
23 Portsmouth, NH 03801  
24 Tel.: (603) 294-1591  
25 Fax: (800) 922-4851

26 **DEPARTMENT OF JUSTICE**

*Attorneys for Defendants California Department  
of Public Health and Sandra Shewry*

27 Jennifer M. Kim  
28 Supervising Deputy Attorney General  
Jennifer.Kim@doj.ca.gov  
Tel. (213) 269-6262  
Andrew Z. Edelstein  
Deputy Attorney General  
Andrew.Edelstein@doj.ca.gov  
Tel. (213) 269-6346  
300 S. Spring Street, Suite 1702  
Los Angeles, CA 90013  
Fax: (916) 731-2125

1  
2 **DEPARTMENT OF JUSTICE**  
3 Grant Lien  
4 Deputy Attorney General V  
5 Grant.Lien@doj.ca.gov  
6 Health, Education, and Welfare Section  
7 1300 I Street, Suite 125  
8 Sacramento, CA 95814  
9 Tel.: (916) 210-7920  
10 Fax: (916) 324-5567

*Attorneys for Defendants California Department  
of Public Health and Sandra Shewry*

8 **CRUSER, MITCHELL, NOVITZ,  
9 SANCHEZ, GASTON & ZIMET, LLP**  
10 Kevin R. Lussier  
11 KLussier@cmlawfirm.com  
12 Katherine S. Bekken  
13 kbekken@cmlawfirm.com  
14 800 Wilshire Boulevard, 15th Floor  
15 Los Angeles, CA 90017  
16 Tel.: (213) 689-8500  
17 Fax: (213) 689-8501

*Attorneys for Defendant Thrive Tribe Foundation*

15 **ROB D. CUCHER, ATTORNEY AT LAW**  
16 Rob D. Cucher  
17 cucherlaw@msn.com  
18 315 S. Beverly Drive, Suite 310  
19 Beverly Hills, CA 90212  
20 Tel.: (310) 795-5356  
21 Fax: (310) 837-1996

*Attorneys for Defendants Evolve Healthcare and  
Gary Goldstein*

20 **LEWIS BRISBOIS BISGAARD & SMITH**  
21 Kamran Salour  
22 Kamran.Salour@lewisbrisbois.com  
23 650 Town Center Dr. Ste 1400  
24 Costa Mesa, California 92626  
25 Tel.: (213) 379-2240

*Attorneys for Defendant Good Health, Inc. d/b/a  
Premier Pharmacy Services*